2006

Richard Davis v. Provo City Corporation; Greg Sperry, Red Slab, LLC, and John L. Valentine : Brief of Appellee

Utah Court of Appeals

IN THE UTAH SUPREME COURT

RICHARD DAVIS, Plaintiff/Appellant, vs. PROVO CITY CORPORATION, Defendant/Appellee. GREG SPERRY, RED SLAB, LLC, and JOHN L. VALENTINE. Defendants.	:	**BRIEF OF APPELLEE PROVO CITY** Case No. 20060909-SC

INTERLOCUTORY APPEAL FROM A DECISION OF THE
FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY
THE HONORABLE JAMES R. TAYLOR, DISTRICT COURT JUDGE

Michael N. Zundel (#3655)
James A. Boevers (#0371)
PRINCE, YEATES & GELDZAHLER
175 East 400 South
Salt Lake City, Utah 84111
Attorneys for Richard Davis

Steven F. Allred (#05437)
Troon Park, 584 South State Street
Orem, Utah 84058
Attorney for Greg Sperry

Phillip E. Lowry (#06603)
HOWARD, LEWIS & PETERSEN
120 East 300 North
P. O. Box 1248
Provo, Utah 84603
Attorney for Red Slab, LLC and John L. Valentine

Jody K Burnett (#0499)
Dennis C. Ferguson (#A1061)
WILLIAMS & HUNT
257 East 200 South, Suite 500
P. O. Box 45678
Salt Lake City, Utah 84145-5678

Robert D. West (#4769)
David C. Dixon (#0890)
Camille S. Williams (#7018)
James L. Wilde (#3465)
Provo City Attorney's Office
351 W. Center Street
P. O. Box 1849
Provo, Utah 84306

Attorneys for Appellee Provo City

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Orem, Utah 84058
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HOWARD, LEWIS & PETERSEN
120 East 300 North
P. O. Box 1248
Provo, Utah 84603
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Jody K Burnett (#0499)
Dennis C. Ferguson (#A1061)
WILLIAMS & HUNT
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Provo City Attorney's Office
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Attorneys for Appellee Provo City

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STATEMENT OF JURISDICTION

This Court has jurisdiction, conferred by Utah Code Ann. § 78-2-2(3) (2006), to review Mr. Davis' interlocutory appeal from an order of the Fourth Judicial District Court of Utah County. The Order Granting Defendant Provo's Motion to Dismiss and Related Rulings is dated September 20, 2006.

STATEMENT OF ISSUES, PRESERVATION OF ISSUES, AND STANDARDS OF REVIEW

1. Did the trial court properly rule that Mr. Davis' seventh claim against Provo is barred by the "catch-all" four-year statute of limitations in Utah Code Ann. § 78-12-25(3) (2006)? This issue was briefed and preserved by Provo in arguments before the trial court. R. 1789–92. The standard for review of the applicability of a statute of limitations is a matter of law and is governed by a "correctness" standard. In re Hoopiiaina Trust (Nolan v. Hoopiiaiana), 2006 UT 53, ¶ 19, 144 P.3d 1129.

2. Is Mr. Davis' seventh claim also barred by the provisions of prior Utah Code Ann. § 10-2-403 (1977), and/or its successor statute § 10-2-422 (2006)? This issue was preserved by Provo in its pleadings and arguments made to the trial court. R. 528–30; 1068–70; 1792–94. Issues of statutory interpretation are questions of law and are reviewed under a correctness standard, granting no special deference to the trial court's ruling. Pugh v. Draper City, 2005 UT 12, ¶ 7, 114 P.3d 546.

3. Is Mr. Davis' seventh claim further barred by his failure or that of his predecessors-in-interest to contest Provo's 1978 annexation within a reasonable period of

time, in light of the fact that Provo fully or substantially complied with the then applicable Utah annexation statutes? Provo raised this issue with the trial court. R. 527, 1791–94. An appellate court reviews questions of a city's full or substantial compliance with annexation statutes for correctness, but may allow some deference to a trial court ruling where appropriate. Szatkowski v. Bountiful City, 906 P.2d 902, 904 (Utah App. 1995).

RELEVANT STATUTES

1. Prior Utah Code Ann. § 10-2-401 (1977), included in the Addendum as Exhibit C.

2. Prior Utah Code Ann. § 10-2-403 (1977), cited in paragraph 10 of Provo's Statement of Facts, and included in the Addendum as Exhibit D.

3. Present Utah Code Ann. § 10-2-422 (2006), cited in paragraph 14 of Provo's Statement of Facts, and included in the Addendum as Exhibit E.

4. Utah Code Ann. § 78-12-25(3) (2006), cited in paragraph 18 of Provo's Statement of Facts.

STATEMENT OF THE CASE

A. Nature of the Case.

In November 2005 Richard Davis ("Mr. Davis") filed an amended complaint in this action that named a number of defendants for the first time, one of which was Provo City ("Provo"). All of his claims involve real property located within Provo's city limits.

Provo is the only defendant involved in the interlocutory appeal now before this Court. In 1978 Provo annexed land that included the real property in which Mr. Davis acquired an interest approximately 20 years later in 1998 (the "Property"). Mr. Davis' seventh claim alleges Provo "illegally" annexed that Property nearly 30 years ago. That seventh claim is the only claim in Mr. Davis' amended complaint now before this Court on interlocutory appeal.

B. Course of Proceedings and Trial Court Disposition.

After Provo was named as a party in 2005, it filed a motion to dismiss Mr. Davis' amended complaint. The trial court treated Provo's motion as one for summary judgment. At the hearing on its motion and in further briefing allowed by the trial court, Provo argued that Mr. Davis' claim against the city was barred by the four-year statute of limitations in Utah Code Ann. § 78-12-25(3). Provo also asserted Mr. Davis' seventh claim is barred by the conclusive presumptions in Utah Code Ann. § 10-2-422 or its predecessor, § 10-2-403 (1977). On June 28, 2006, the trial court issued a memorandum decision granting Provo's motion. The trial court held Mr. Davis' Seventh Cause of Action was barred by the four-year statute of limitations and found that neither §§ 10-2-403 nor 10-2-422 were statutes of limitation. Mem. Dec., Ex. A to the Addendum. On September 20, 2006, the trial court signed its Order dismissing Mr. Davis' Seventh Cause of Action. Order, Ex. B to Addendum. Plaintiff then filed this interlocutory appeal.

PROVO'S STATEMENT OF FACTS

A. General Response to Mr. Davis' Statement of Facts.

Except as noted below, Provo disputes all factual and conclusory assertions set out in Mr. Davis' statement of facts. In his brief Mr. Davis repeatedly confuses a municipal levy (*see* Utah Code Ann. §§ 10-2-422, 10-5-112 and 10-6-133 (2006)) with a county valuation assessment or tax payments by a landowner resulting from that assessment (*see* Utah Code Ann. § 59-2-908–913 (2006) and R. 1069–70). He equates Provo's concern about permit compliance with his perception that Provo intends to prevent his mining operations on the property. Appellant Br. 6, n.10. His brief mentions his and others' claimed interests in the Property. Those issues have not yet been decided by the trial court, are premature and completely irrelevant to the issues presented by this appeal, as are other matters about land use and percentages of property ownership. *See* Appellant Br. 6, par. 2; *id.*, at 6–7.

B. Provo's Statement of Facts.

1. On or about December 21, 1977, annexation petitions were filed with the Provo City Recorder to bring an unincorporated area of Utah County, including the Property, within the municipal boundaries of Provo City. The petitions contain apparent signatures of Calvin Monk, John S. Belmont, Wilderness Associates' Vice President, and Floyd Dixon's agent. One petition refers to an earlier one filed by David Grow, Steven

Grow, Resource Dynamics, Inc., Goodlife, Johnson & Lofgreen, and Paddy Associates. R. 566–69.

2. On January 19, 1978, Provo's Board of Commissioners passed an annexation resolution to bring certain land, including the Property, within Provo's city limits. R. 559–61.

3. The annexation resolution recites: (a) a majority of the real property owners and owners of at least one-third of the real property value petitioned for annexation; (b) a plat or map of the area to be annexed accompanied the petition; and (c) the petition and plat or map were filed with Provo City's Recorder. R. 561.

4. The 1978 annexation did not create unincorporated islands. R. 1073–74. Much of the incorporated lands did belong to the United States, but federal lands are not usually assessed, valued, or taxed by the state or county. R. 1061; 1069–71. Also, on June 5, 1979, Provo and Uinta National Forest, USDA, signed a Memorandum of Understanding involving mutual responsibilities with respect to the annexed lands. R. 554–57.

5. On January 19, 1978, a map of the annexed property and a copy of the annexation resolution were filed by Provo with the Utah County Recorder's Office. R. 417–19; 703. See partial map enlargement, R. 703, Ex. F to Addendum.

6. Under official seal of the Lieutenant Governor/Secretary of State, on February 28, 1978, he certified that a copy of the Articles of Amendment to the Articles

of Incorporation of Provo City's 1978 annexation was filed with his office in compliance with Utah Code Ann. §§ 10-2-108 and 10-2-401 (1977). R. 559–64.

7. Assessment records of the Utah County Treasurer's Office (the entity that assesses real property taxes in that county) list the names of property owners in the annexed area and years real property taxes were paid of those property owners in Provo City Taxing District 110 according to Utah County Real Property Owner Information sheets. R. 827–1028; 1061, 1070; 1029–32; 1034; 1052–55; 1472–73.

8. People or entities in Provo City Taxing District 110 paid real property taxes to Utah County in the early 1980s, based upon Utah County assessments of the annexed areas and the levies of relevant taxing entities. See id.

9. The following individuals or entities, all petitioners for annexation, were assessed by and paid taxes to Utah County on lands in Provo City Taxing District 110 (assessment years are listed in parentheses): John S. Belmont (1981-2005); Floyd Dixon (1982-2005); Wilderness Associates, Inc. (1981-1983); Goodlife, Johnson & L (1981); David Grow (1982-1988); Paddy Assoc. (1982-1984); and Steven Grow (1985-1988). R. 1029–32; 1034; 1052–55; 1061.

10. At the time of the 1978 annexation, Utah Code Ann. § 10-2-403 (1977) provided as follows:

> **Annexation deemed conclusive.** Whenever the inhabitants of any territory annexed to any municipality pay property tax levied by the municipality for one or more years following the annexation and no inhabitants of the territory protests (sic) the

> annexation during the year following the annexation, the territory shall be *conclusively presumed* to be properly annexed to the annexing municipality. . .

Ex. D to Addendum (emphasis added).

11. Mr. Davis does not claim nor provide evidence that any original owner of lands included in the 1978 annexation (including his predecessors in interest) ever protested the 1978 annexation. R. 1071; 1472; Appellant Br. 3–4, 10–11.

12. Mr. Davis acquired a one-half undivided interest in the Property by warranty deeds dated April 16 and April 20, 1998. R. 170; 174; 240–44.

13. At or shortly after he acquired his interests in the Property, Mr. Davis knew those lands were located within Provo's city limits. R. 1799; 1800–804.

14. At the time Mr. Davis first obtained his interests in the Property, Utah Code Ann. § 10-2-422 read as follows:

> **Conclusive presumption of annexation.** An area annexed to a municipality under this part *shall be conclusively presumed* to have been validly annexed if:
>
> (1) the municipality has levied and the taxpayers within the area have paid property taxes for more than one year after the annexation; and
>
> (2) no resident of the area has contested the annexation in a court of proper jurisdiction during the year following annexation.

Ex. D to Addendum (emphasis added).

15. Provo does not claim it assessed real property taxes against the land in which Mr. Davis claims an interest. The City does assert that it levied a general city property tax rate for all real property within its city limits. Most of the property annexed in 1978 was assigned by Utah County to Provo City Taxing District No. 110. The county made and collected assessments on real property in City Taxing District 110 presumably based on a municipal levy by Provo. *See* R. 1052–55, 1961.

16. Mr. Davis makes no claim that he, his predecessors, or anyone else, contested the 1978 annexation in a court of competent jurisdiction within one year or four years of the 1978 annexation. Appellant Br. 3–4.

17. He filed no court action to contest the 1978 annexation within one year or four years of the time he acquired his interests in the subject Property. R. 1052–55, 1961. (By making this observation, Provo does not admit Mr. Davis ever had any right to contest the 1978 annexation.)

18. At all times relevant to this action, § 78-12-25(3) of the Utah Code provided, and now provides: "An action may be brought within four years: . . . For relief not otherwise provided for by law."

19. On November 23, 2005, more than seven (7) years after he obtained his interests in the Property, Mr. Davis filed an amended complaint in which he first named Provo as a party defendant and claimed the city "illegally annexed" the Property as part of the 1978 annexation. R. 417–78.

20. Provo filed a motion to dismiss Mr. Davis' claim that Provo's 1978 annexation was invalid. The district court treated Provo's motion to dismiss as a motion for summary judgment. R. 517–18, 1879.

21. Provo argued its motion to dismiss/motion for summary judgment on April 13, 2006. The trial court allowed both parties to submit supplemental memoranda on the statute of limitations issues. R. 1751 and unstamped page btw R. 1783 and 1784.

22. During the oral argument, Mr. Davis' counsel stated that his client's wrongful annexation claim did not involve quiet title issues. R. 1791.

23. On June 28, 2006, the trial court issued a Memorandum Decision granting Provo's motion to dismiss on the statute of limitations issue. R. 1839–42; Ex. A to Addendum, pp. 1–4.

24. Provo generally concurs with the language of and rulings in that Memorandum Decision. However, Provo does not agree with any reading of that ruling that indicates or suggests Provo never levied any tax on real property annexed in 1978. Id. at 3.

25. On September 20, 2006, the District Court entered an Order Granting Provo's Motion to Dismiss and Related Rulings. R. 1877–79; Ex. B to Addendum, pp. 1–2.

SUMMARY OF ARGUMENT

1. Mr. Davis' claim that the 1978 Annexation was invalid is barred by the four-year statute of limitations in Utah Code Ann. § 78-12-25(3). Sections 10-2-403 (1977) and 10-2-422 (2006) are not procedural statutes of limitation, but rather substantive conclusive presumptions that do not override § 78-12-25(3).

2. The conclusive presumptions, set forth in §§ 10-2-403 and 10-2-422, bar Mr. Davis' seventh claim because the city levied taxes that were assessed and collected by Utah County shortly after the 1978 annexation. Since neither Mr. Davis nor his predecessors timely protested that annexation, the conclusive presumptions bar Mr. Davis' belated attempt to contest or set aside the annexation.

3. Provo fully or substantially followed the applicable Utah annexation laws in effect in 1978 and thereafter. As a result, the 1978 Annexation is deemed valid. Neither Mr. Davis nor his successors protested the annexation within a reasonable time and therefore his belated attempt to do so now is barred.

ARGUMENTS

I. AS A MATTER OF LAW, MR. DAVIS' SEVENTH CAUSE OF ACTION AGAINST PROVO IS BARRED BY UTAH CODE ANN. § 78-12-25(3).

Utah Code Ann. § 78-12-25(3) provides that an action may be brought within four years: "for relief not otherwise provided by law." In a recent decision, this Court noted with approval the " . . .well-established general rule that the catch-all statute of limitations 'applies to all actions for relief that [are] not otherwise covered by any other section.'" In

re Hoopiiaina Trust (Nolan v. Hoopiiaiana), 2006 UT 53, ¶ 23, 114 P.3d 1129. In the landmark case, Branting v. Salt Lake City, 153 P. 995 (Utah 1915), this Court applied a predecessor of § 78-12-25(3) to a taxpayer action that sought to void a city tax plaintiff claimed was illegally assessed. The Court wrote:

> That [the precursor] section applies to all actions for relief . . . not otherwise covered by any other section. Where therefore affirmative relief is sought, as is this case, that section applies with full force. . . .

Id. at 311.

In its Memorandum Decision and Order (Exhibits A and B of Addendum), the trial court held the four-year statute of limitations in § 78-12-25(3) governs this action. In following § 78-12-25(3) instead of § 10-2-422 (or its predecessor § 10-2-403 (1977)), the lower court ruled the latter is not a true statute of limitations, but rather a ". . . conclusive limitation that can *defeat a challenge to an annexation*, but it does not *prevent a challenge*, which is the function of a statute of limitations." Mem. Dec., Ex. B to Addendum, at p. 3 (emphasis added).

The crux of Mr. Davis' appellate argument is that present § 10-2-422 and past § 10-2-403 are statutes of limitation. Appellant Br. 7–12. The trial court properly ruled they are not.

The headings and texts of both §§ 10-2-422 and 10-2-403 only deal with conclusive presumptions about annexations. They neither are, nor purport to be, statutes of limitation. Provo's Statement of Facts ¶¶ 10, 14. A conclusive presumption is a rule

of substantive law couched as a rule of evidence. Jerome Prince, *Richardson on Evidence* 34 (9th ed. 1964). "Conclusive presumptions . . . prescribe substantive rights, and are not merely rules of remedy." Buhler v. Maddison, 176 P.2d 118 (Utah 1947) (citation omitted). Neither of the statutes Mr. Davis cites grant a property owner a right in perpetuity to void a decades-old annexation. Mem. Dec., Ex. A of Addendum at p. 3.

A statute of limitations is not synonymous with a conclusive presumption. Unlike the latter which define *substantive* rights (here the right to contest the fact of an annexation), "statutes of limitation are essentially *procedural* in nature . . . and do not abolish a right to sue." Utah v. Lusk, 2001 UT 102, ¶ 28, 37 P.3d 1103 (citation omitted) (emphasis added). The function of a statute of limitations is to establish the time within which suit must be filed. As this Court has noted:

> Statutes of limitation are essentially procedural in nature and establish a prescribed time within which an action must be filed after it accrues. They do not abolish a substantive right to sue, but simply provide that if an action is not filed within the specified time, the remedy is deemed to have been waived unless the plaintiff did not know of the facts giving rise to the cause of action. . . .

Lee v. Gaufin, 867 P.2d 572, 575 (Utah 1993) (citation omitted).

In Utah the essential purposes of a statute of limitations are twofold: 1) to prevent the assertion of stale claims against a defendant; and 2) to have claims timely litigated before evidence is lost, memories fade, or witnesses are unavailable. Those principles

apply here and are summarized in Vigos v. Mountain Builders, Inc., 2000 UT 2, 993 P.2d 207, where this Court noted:

> Statutes of limitations are intended to prevent unfair dilatory litigation against a defendant and to require that claims be litigated while proper investigation and preservation of evidence can occur. Examples of unfair litigation include surprise or ambush claims, fictitious and fraudulent claims, and stale claims. (citation omitted). Evidentiary problems include lost evidence, faded memories and disappearing witnesses.

Id. at ¶ 22.

This Court similarly noted in Lund v. Hall, 938 P.2d 285 (Utah 1997):

> It is generally recognized that the purpose of statutes of limitations is to encourage promptness in the prosecution of actions and thus avoid the injustice which may result from the prosecution of stale claims. Statutes of limitations attempt to protect against the difficulties caused by lost evidence, faded memories and disappearing witnesses.

Id. at 291.

The trial court properly noted that while § 78-12-25(3) achieves both functions of a pure statute of limitations, §§ 10-2-422 and 10-2-403 do neither. Mem. Dec., Ex. A to Addendum, at p. 3. The respective headings and texts of both statutes merely describe conclusive presumptions against a party wishing to contest an annexation. Perhaps more significantly, in addressing a similar annexation statute (that became effective after

§ 10-2-403, but before § 10-2-422), the Utah Court of Appeals described that law[1] as merely a conclusive presumption of a substantive right, noting: ". . . The only substantive protection for residents is the presumption of proper annexation mandated by § 10-2-423 . . . ." Mesa Dev. Co. v. Sandy City, 948 P.2d 366, 370 (Utah App. 1997). The Court nowhere referred to § 10-2-423 as a statute of limitations. It simply held that the plaintiff lacked standing to contest § 10-2-423's "conclusive presumption of valid annexation." Id. at 371.

Mr. Davis also claims that since § 10-2-422 and its predecessor are more specific statutes of limitation than § 78-12-25(3), they rather than the catch-all statute should control this action. Appellant Br. 8–9. The first flaw in this argument is that neither §§ 10-2-422 nor 10-2-403 are true statutes of limitations. He cites no authority for his claim that conclusive presumptions (that abolish a right to sue) take precedence over a statute of limitations (that limits the time within which a party may bring an action). Provo has not been able to find any such Utah authority. In addition, the two cases Mr. Davis does cite (Appellant Br. 8–9) for his argument that a more specific statute of limitations controls over a more general one are not analogous to the facts presented in

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[1] Former § 10-2-423 (1996) provided: Whenever the residents of any territory annexed to any municipality pay property taxes levied by the municipality for one or more years following the annexation and no residents of the territory contest the annexation in a court of proper jurisdiction during the year following the annexation, the territory shall be conclusively presumed to be properly annexed to the annexin municipality. (cited in Mesa Dev. Co. v. Sandy City, 948 P.2d 366, 368 (Utah App. 1997)).

this case. Carter v. Univ. of Utah Medical Center, 2006 UT 78, 150 P.3d 467, involved neither a conclusive presumption nor a statute of limitation. In that case two venue statutes conflicted with each other. Those facts are not at all this case. South Carolina v. Columbus, 528 S.E.2d 408 (S.C. 2000) dealt with a conflict between two statutes of limitations that were both located within the South Carolina Code's limitation of actions § 5-3-101, et seq. Neither *Carter* nor the non-Utah Columbus decisions involved a conflict between a statute of limitations and conclusive presumptions. Thus, both decisions are inapposite.

Finally, in Quick Safe-T Hitch, Inc. v. RSB Systems, 2000 UT 84, 12 P.3d 577, a case involving the issue of which of two statutes of limitations applied to a plaintiff's claim, this Court noted that a statute of limitations is one that limits the time in which an action may be brought. Reading §§ 78-12-1 and 78-12-25(3) together:

> The plain language of these two sections clearly requires that section 78-12-25(3)'s four year "catch-all" statute of limitations be applied to claims for which the legislature has not enacted a more *specific statute restricting the time in which a particular claim may be brought.*

Id. at ¶ 15 (emphasis added).

The trial court correctly determined that the catch-all, four-year statute in § 78-12-25(3) applied to the claims asserted in the plaintiff's Seventh Cause of Action. That reasoning is logically sound, supported by appropriate Utah case

law and statutory authority, and supports the legitimate public policy goal of finality by avoiding a belated challenge to an annexation years after the fact where no timely objection or challenge has ever been raised by the current property owner or his predecessors.

II. MR. DAVIS' SEVENTH CAUSE OF ACTION AGAINST PROVO IS ALSO BARRED BY UTAH CODE ANN. § 10-2-403 AND/OR ITS SUCCESSOR STATUTE, § 10-2-422.

If, for the limited purposes of this argument only, we assume that Mr. Davis' Seventh Cause of Action is not barred by the statute of limitation set out in § 78-12-25(3), it is still barred by the conclusive presumption provisions in prior §§ 10-2-403 or 10-2-422. Each of those statutes provides in essence, that where inhabitants (or residents) of lands annexed by a city pay property taxes based upon a municipal levy at least one year after the annexation and no inhabitant (or resident) protests during the year following that annexation, those lands are conclusively presumed to have been properly annexed. It is noteworthy that the municipality is not required to assess the specific amount of the taxes for each property parcel (as that is the responsibility of the county). Neither is it required that every landowner pay the assessed property taxes.

Here the annexation took place in 1978. R. 559–61. By the early 1980s, owners of the annexed lands were assessed and the owners began paying real property taxes to Utah County. R. 1029–32; 1034; 1052–55; 1061. Prior to the time those real property taxes were paid, most of those properties had been assigned by the County to Provo

Taxing District 110. Id. Provo acknowledges that the state "assesses all mines and mining claims." R. 1061. There is an exception: where the state determines that "the mining claims are used for other than mining purposes, in which case the value of mining claims "shall be assessed by the assessor of the county in which the mining claims are located." Utah Code Ann. § 59-2-201(1)(e) (2006). One parcel of annexed property (i.e., the Davis Property) was "incorrectly treated for valuation and taxation purposes." R. 1061. If any mistake were made in assessing Mr. Davis' property, such would have been by governmental agencies other than Provo City.

This Court may take judicial notice that a county can only place real property in a city taxing district where the city has already annexed the land. A county can only assess the landowners a real property tax where a municipality has levied a real property tax rate generally applicable to real property within the city limits. If there is no evidence that a landowner or inhabitant has protested during the year following the annexation, the annexation is conclusively presumed valid. Here, it is uncontested that the Property in question was annexed into the Provo City limits in 1978. The annexed lands were assigned to a city taxing district. Real property tax assessments were made by the County. Landowners within the city taxing district paid those real property taxes assessed by the County. Absent any evidence of a landowner or inhabitant protesting within the year after annexation, the conclusive presumption should apply and the annexation be deemed effective.

Contrary to Mr. Davis' assertion, nothing in either § 10-2-403 or its successor statute even remotely suggests that a subsequent interest holder has a right in perpetuity to successfully contest an annexation that took place without incident more than twenty years earlier. Such an interpretation could wreak havoc on any prior annexation, and under Mr. Davis' arguments, such a belated challenge could be made years, or even decades, after the annexation, and long after intervening rights and responsibilities had been established and relied upon by all interested parties.

Even if there had been some defect in the annexation process, a leading text on municipal law presumes the validity of an annexation even if later it appears there were irregularities:

> The validity of changes of municipal boundaries is presumed, in accordance with the general policy applicable to the original creation of municipal corporations. Thus, after public acquiescence for a considerable period, presumptions in favor of the regularity of proceedings to attach territory to a municipal corporation will be indulged, and this is true although irregularities appear which would have defeated the annexation if action had been taken in time. It will be presumed, in favor of annexation, that the authorities properly performed their duties, that the existence of jurisdictional facts was found, and that, after annexation, the municipality will act in conformity with the law.

2A *McQuillan Mun. Corp.*, § 7.44 (3d ed. 1996).

For all of these reasons, the 1978 annexation should be conclusively presumed to be valid, thus barring the seventh claim in the amended complaint.

III. MR. DAVIS' SEVENTH CLAIM IS FURTHER BARRED BY HIS FAILURE OR THAT OF HIS PREDECESSORS-IN-INTEREST TO CONTEST PROVO'S 1978 ANNEXATION WITHIN A REASONABLE PERIOD OF TIME AFTER PROVO FULLY OR SUBSTANTIALLY COMPLIED WITH THE THEN APPLICABLE UTAH ANNEXATION STATUTES

Former Utah Code Ann. § 10-2-401 (1977) (*see* Ex. C to Addendum) outlined the steps necessary for a city to properly annex new territory into its city limits. The salient portions of § 10-2-401 at the time of the annexation are listed in numbered sequence below. After each recitation of the cited statutory requirements, Provo's outlines its actions and efforts to comply with the specific mandate of each cited statutory provision.

1) A majority of the real property owners and the owners of at least one-third in value of the real property must petition the city for annexation of the real property in question. Then, under the direction of the city engineer or surveyor, an accurate map or plat of the proposed annexation territory is to be prepared. The map and a petition for annexation must be submitted and filed with the City Recorder's Office. Ex. C to Addendum.

1a) Provo's 1978 annexation resolution recites:

> WHEREAS, a majority of the owners of real property and the owners of not less than one-third in value of the real property as shown on the last assessment rolls in [the] territory lying contiguous to this municipality have petitioned this municipality for annexation; and
>
> WHEREAS, the petition was accompanied by an accurate plat or map of the territory to be annexed prepared

> under the supervision of the City Engineer or a competent surveyor and certified by the engineer or surveyor; and
>
> WHEREAS, the petition and plat or map have been filed in the Office of the City Recorder.

R. 561.

2) By at least a two-thirds vote, the governing body of the city must pass a resolution to accept the petition for annexation and order the territory to be annexed within the boundaries of the municipality. Utah Code Ann. § 10-2-401 (1977).

2a) The 1978 annexation resolutions recites that by a two to zero vote (with one member excused), Annexation Resolution No. 5 passes, and that ". . . The property herein described which lies in Utah County is hereby declared annexed to Provo City." R. 561.

3) If the territory is annexed, a copy of the certified plat or map shall immediately be filed with the county recorder, together with a certified copy of the annexation resolution.

3a) Exhibit "H" to Mr. Davis' amended complaint includes a vicinity map of the annexed territory, bearing apparent stamp no. 2567 with a recording date of January 19, 1978, made by the Utah County Recorder's Office plus a copy of the annexation resolution, bearing apparent stamp no. 2568, with book and page numbers also apparently stamped by the Utah County Recorder. R. 417–19; 703.

4) The municipality's articles of incorporation are to be amended to reflect the newly annexed territory, and a copy of the articles of amendment are to be filed with the Utah Secretary of State and the county clerk as prescribed by Utah Code Ann. § 10-2-108.

4a) A certificate under seal of the Utah Lieutenant Governor/Secretary of State recites that a certified copy of the Articles of Amendment to the Articles of Incorporation of Provo City, annexing the property of the 1978 Annexation, and that those documents comply with Utah Code Ann. §§ 10-2-108 and 10-2-401 (1977). Certified copies of the Articles of Amendment and the Annexation Resolution are appended to the Secretary of State certificate. R. 559–64.

After reciting each of the above steps that are needed to effectuate an annexation, § 10-2-401 concludes:

> On filing the maps, plats and articles of amendment, the annexation *shall be deemed complete* and the territory annexed shall be deemed and held to be part of the annexing municipality, and the inhabitants thereof shall enjoy the privileges of the annexation and be subject to the ordinances, resolutions and regulations of the annexing municipality.

Utah Code Ann. § 10-2-401 (1977) (emphasis added).

Where a reviewing court concludes a city has the statutory authority to annex real property, and acts within the parameters of its authority in passing an annexation resolution, "fixing municipal boundaries is a legislative function with which this Court generally will not interfere." Sandy City v. City of South Jordan, 652 P.2d 1316, 1318–19 (Utah 1982). See also Freeman v. Centerville City, 600 P.2d 1003, 1005 (Utah

1979). Annexation statutes grant a city broad discretion in making boundary changes. Szatkowski v. Bountiful City, 906 P.2d 902, 904 (Utah App. 1995). Such statutes are liberally construed in favor of the municipality. Id. (citation omitted).

Courts generally will not interfere with the annexation process where a city has substantially complied with the governing annexation statutes. Sweetwater Properties v. Town of Alta, 622 P.2d 1178, 1183 (Utah 1981) ("Courts are almost unanimous in holding that substantial compliance with annexation law is all that is required of municipalities. . . ."), *modified on rehearing* 638 P.2d 1189 (Utah 1981), *overruled on other grounds*, Pike v. Countryside Annexation v. Vernal City, 711 P.2d 240 (Utah 1985). In Doty v. Town of Cedar Hills, 565 P.2d 993 (Utah 1982), this Court indicated if a city can show ". . . either actual or substantial compliance with Utah's annexation statute, the annexation would have to be upheld." Id. at 996. See also Szatkowski, 906 P.2d at 904; Sandy City v. City of South Jordan, 652 P.2d at 1319.

This Court summarized the effect of the § 10-2-401 (1977) where a city had fully or partially complied with the statutory requirements:

> When the appropriate maps, plats and documents . . . were filed . . . the territory annexed was "deemed and held to be part of the annexing municipality, and inhabitants thereof shall enjoy the privileges of the annexation." The affidavits filed with South Jordan's motion for summary judgment establish that property taxes were paid by the inhabitants of that territory for more than one year following annexation and it is an undisputed fact that no inhabitants of the territory filed a protest during the year following the annexation. Therefore, by operation of the statute, the annexation was deemed

> complete . . . and the propriety of the annexation was conclusively presumed one year later.

Sandy City v. City of South Jordan, 652 P.2d at 1319. This was the statute in effect at the time of Provo's 1978 annexation, and the date of this Court's decision in that case was made at or near the time landowners within the annexed area had begun paying the property taxes assessed by Utah County. Ex. C to Addendum, R. 827–1028; 1029–32, 1034; 1052–55; 1061.

Provo submits that the undisputed evidence in the record before the trial court supports the conclusion that the City fully or substantially complied with the requirements of Utah's annexation statutes that were in effect in 1978. At a minimum, the validity of the 1978 Annexation is presumed. That presumption was not challenged by Mr. Davis from 1978 until the filing of his amended complaint in 2005. For reasons already argued, Provo claims any attempt to void the 1978 annexation is barred by either § 78-12-25(3) or by conclusive presumptions set out in present Utah Code Ann. § 10-2-422 or in prior § 10-2-403.

Assuming, merely for the sake of argument, that neither the statute of limitations nor the conclusive presumption bar Mr. Davis' Seventh Cause of Action, his claim is still barred because neither he nor his predecessor-in-interest contested the validity of the 1978 annexation within a reasonable period of time. Even if § 78-12-25(3) does not govern, and/or the conclusive presumptions do not apply, Mr. Davis does not have unlimited time within which to bring this action. Where no specific time is given for

some legal act to be done, the law requires action within a reasonable period of time. See Laub v. South Central Utah Tel. Ass'n, 657 P.2d 1304, 1306–1307 (Utah 1982). That principle has been held applicable to an annexation case. Johnson v. Sandy City, 497 P.2d 644, 646 (Utah 1972) (". . .where no definite time is specified for an act to be done the usual rule is that it is required to be done at least within a reasonable time under the circumstances") (city unduly delayed filing an annexation ordinance with the county recorder). The principle of failure to act within a reasonable time is particularly applicable to Mr. Davis' situation. In both its Memorandum Decision (Mem. Dec., Ex. A to Addendum, at p. 3) and its Order (Ex. B to Addendum, at p. 2) the trial court correctly ruled that Mr. Davis has no right to contest the 1978 Annexation. Rather, the Court properly held:

> The Court rejects Plaintiff's argument that either present § 10-2-422 or prior § 10-2-403 (1977) gives him a right in perpetuity to contest an annexation by Provo which occurred several decades before Plaintiff acquired interests in his property.

Id.

That language is both persuasive and legally correct. Provo asks that this Court uphold the lower court ruling dismissing the seventh claim in Mr. Davis' amended complaint.

CONCLUSION

Mr. Davis' claim against Provo is barred by the four-year, catch-all statute of limitations and by the conclusive presumptions contained in the two statutes frequently cited in this brief. Even if those statutory provisions do not apply, the 1978 Annexation is presumed valid and Mr. Davis and his predecessors in interest failed to contest the annexation within a reasonable period of time.

DATED this 14th day of May, 2007.

WILLIAMS & HUNT

By _____
Jody K. Burnett
Dennis C. Ferguson

PROVO CITY CORPORATION
Robert D. West (#4769)
David C. Dixon (#0890)
Camille S. Williams (#7018)
James L. Wilde (#3465)

135186.1

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2007, I caused to be mailed by first class mail, postage prepaid, two true and correct copies of the Brief of Appellee Provo City, to:

Attorneys for Richard Davis
Michael N. Zundel
James A. Boevers
PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111

Attorney for Greg Sperry
Steven F. Allred
Troon Park, 584 S. State Street
Orem, Utah 84058

Attorneys for Red Slab, LLC and John L. Valentine
Phillip E. Lowry
HOWARD, LEWIS & PETERSEN
120 East 300 North
P.O. Box 1248
Provo, Utah 84603

Jody K Burnett

ADDENDUM

A. *Memorandum Decision, Judge James R. Taylor, June 28, 2006*

B. Order Granting Defendant Provo's Motion to Dismiss and Related Rulings, Judge James R. Taylor, September 20, 2006

C. Laws of the State of Utah, 1977, § 10-2-401

D. Laws of the State of Utah, 1977, § 10-2-403

E. Utah Code Ann. § 10-2-422 (2006)

F. Vicinity Map No. 2567

EXHIBIT A

Memorandum Decision, Judge James R. Taylor, June 28, 2006

IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH

Richard Davis, Plaintiff, vs. Greg Sperry, et al, Defendants.	**MEMORANDUM DECISION** Date: June 28, 2006 Case No.: 000403760 Division VII: Judge James R. Taylor

This matter comes before the Court on a Motion to Dismiss by Provo City. Oral arguments were held on April 13, 2006 and this matter has been subsequently briefed. For the reasons stated below, Provo City's motion is granted.

Factual Background

When reviewing a motion to dismiss, the Court accepts the factual allegations in the complaint as true and "interprets those facts and all reasonable inferences drawn therefrom in a light most favorable to the plaintiff as the nonmoving party." Russell Packard Dev. v. Carson, 108 P.3d 741, 743 (Utah 2005). The facts are recited accordingly. In 1978, Provo City annexed a large tract of land known as the Heritage Mountain Annexation. In 1998, Plaintiff Richard Davis and Defendant Greg Sperry recorded interests in property that lies within the Heritage Mountain Annexation. According to an affidavit by Davis, Provo City has never levied any

property taxes on the property while he has had an interest. In his amended complaint filed on November 23, 2005, Davis asserts that Provo City's annexation of his property was done illegally, making the annexation void. Provo City's seeks to dismiss the Seventh Cause of Action in Davis' amended complaint, the only cause of action against them in this case.

Motion to Dismiss

Provo asserts three different grounds for dismissal: statute of limitations, laches, and the Governmental Immunity Act of Utah. Davis has filed a U.R.C.P. 56(f) request for extension of time for discovery for this motion. Beginning with the statute of limitations, Provo asserts that Davis' claim is barred by a statute of limitations under U.C.A. § 78-12-25(3). In response, Davis argues that another statute, U.C.A. § 10-2-422, trumps the four-year limitation, allowing him to still seek relief against Provo.

Under U.C.A § 78-12-1, civil actions "may be commenced only within the periods prescribed in this chapter . . . except in specific cases where a different limitation is prescribed by statute." Further, U.C.A. § 78-12-25(3) provides that "an action may be brought within four years: for relief not otherwise provided for by law." These sections require that the four-year limitation "be applied to claims for which the legislature has not enacted a more specific statute restricting the time in which a particular claim may be brought." Quick Safe-T Hitch, Inc. v. RSB Sys., 12 P.3d 577, 579 (Utah 2000).

Provo asserts that the four-year limit applies because a "different limitation" does not exist. Davis claims that UCA § 10-2-422 is a "different limitation" under U.C.A. § 78-12-1,

which would take their cause of action out of the four-year limitation. UCA § 10-2-422, which was substantively the same statute at the time of annexation, provides:

> An area annexed to a municipality under this part [U.C.A. §§ 10-2-401 to 10-2-428] shall be conclusively presumed to have been validly annexed if:
> (1) the municipality has levied and the taxpayers within the area have paid property taxes for more than one year after annexation; and
> (2) no resident of the area has contested the annexation in a court of proper jurisdiction during the year following annexation.

Because Provo City has never levied taxes on Davis while he has owned the property, the property cannot be "conclusively presumed to have been validly annexed." Davis asserts that U.C.A. § 10-2-422 is a statute of limitations that has not yet run against him, allowing him to bring suit against the annexation that took place in 1978.

The general goals of statutes of limitations are "to prevent unfair dilatory litigation against a defendant and to require that claims be litigated while proper investigation and preservation of evidence can occur." Vigos v. Mountainland Builders, Inc., 993 P.2d 207, 213 (Utah 2000). U.C.A. § 10-2-422 accomplishes neither of these, instead it is a conclusive limitation that can defeat a challenge to an annexation, but it does not prevent a challenge, which is the function of a statute of limitations. Adopting Davis' interpretation that U.C.A. § 10-2-422 is the proper statute of limitations in this matter, would allow annexations to be challenged in perpetuity as long as property taxes were not levied against a piece of property by Provo City. This Court finds that this matter falls within the catchall four-year limitation in U.C.A. § 78-12-25(3), barring Davis' challenge to the 1978 annexation. Davis has not asserted that the four years should be tolled in any manner. Therefore, Provo City's motion to dismiss the Seventh Cause of

Action in Davis' Amended Complaint is granted. Because Davis is barred by the statute of limitations, the Court will not address Provo's alternative arguments regarding laches and the Utah Governmental Immunity Act. Further, Davis' Rule 56(f) motion is denied because it requests discovery to determine whether U.C.A. § 10-2-422 is applicable, which this decision moots. The Court orders Provo City to prepare an order for the Court's signature consistent with this decision.

Dated this 28 day of June, 2006.

Judge James [illegible]
Fourth Judicial District Court

A certificate of mailing is on the following page.

1020

Davis v. Sperry et al., Memorandum Decision

Copies of this Decision mailed to:

Counsel for the Plaintiff:

Michael N. Zundel
City Centre I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111

Counsel for the Defendants:

David C. Dixon
P.O. Box 1849
Provo, Utah 84603

Phillip E. Lowry
120 East 300 North
P.O. Box 1248
Provo, Utah 84603

Steven F. Allred
584 State Street, #F
Orem, Utah 84058

Mailed this 28 day of June, 2006, postage pre-paid as noted above.

Court Clerk

EXHIBIT B

Order Granting Defendant Provo's Motion to Dismiss and Related Rulings, Judge James R. Taylor, September 20, 2006

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

RICHARD DAVIS	)	
Plaintiff.	)	**ORDER GRANTING DEFENDANT PROVO'S MOTION TO DISMISS AND RELATED RULINGS**
vs.	)	
GREG SPERRY, STEPHEN KAPELOW, LOREN KAPELOW, DESIGN WEST, LLC, RED SLAB, LLC, JOHN L. VALENTINE, and PROVO CITY CORPORATION,	)	Case No. 00403760
	)	Division VII: Judge James R. Taylor
Defendants	)	

Defendant, Provo City Corporation ("Provo"), filed a motion to dismiss the Seventh Cause of Action in Plaintiff Richard Davis' ("Plaintiff"), Amended and Supplemental Complaint. In opposing Provo's motion to dismiss, plaintiff also filed a Rule 56(f) motion and various motions to strike affidavits filed by Provo. Plaintiff and Provo filed affidavits, pre- and post- hearing memoranda and argued their respective positions before the Court at oral arguments held on April 13, 2006. The Court read all memoranda, heard the arguments, and entered a memorandum decision dated June 28, 2006. Deeming itself apprised of the issues before it, the Court enters this Order, the relevant terms of which are:

1. Provo's motion to dismiss the Seventh Cause of Action in Plaintiff's Amended and Supplemental Complaint is granted. That Seventh Cause of Action

against Provo is dismissed with prejudice and on the merits as such claim is barred by the four-year statute of limitations found in U.C.A., § 78-12-25 (3). U.C.A. § 78-12-25(3) disposes of the issues now before the Court, notwithstanding the arguments plaintiff asserts as to U.C.A. § 10-2-422 and/or its predecessor § 10-2-403 (1977) .

2. The Court rejects Plaintiff's argument that either present § 10-2-422 or prior § 10-2-403 (1977) gives him a right in perpetuity to contest an annexation by Provo which occurred several decades before Plaintiff acquired interests in his property.

3. As Plaintiff's Seventh Cause of Action against Provo is barred by the statute of limitations in U.C.A. § 78-12-25(3), the Court neither addresses nor dismisses Provo's alternative arguments of Plaintiff's laches, his failure to file a notice of claim or his failure to file an undertaking as provided by the Utah Governmental Immunity Act.

4. Plaintiff's URCP Rule 56(f) motion is denied because Plaintiff by such motion seeks only to discover matters applicable to U.C.A. § 10-2-422, which does not control the facts of or issues in this case, and which request is mooted by this Order.

5. Plaintiff's motions to strike the affidavits of LaNice Groesbeck, Randall Covington, Karen Jordan, Camille S. Williams and Rick Romney are all denied as Plaintiff's objections go to the weight, and not admissibility, of these affiants' testimony.

Dated this 20 day of Sept., 2006.

Judge James R. Taylor,
Fourth Judicial District Court

MAILING CERTIFICATE

On this ____ day of July, 2006, I mailed a copy of the foregoing Order Granting Defendant Provo's Motion to Dismiss and Other Rulings, by first class mail, postage prepaid to:

David C. Dixon, Esq.
Camille S. Williams, Esq.
James L. Wilde, Esq.
Provo City Attorney's Office
351 West Center Street
P.O. Box 1849
Provo, Utah 84603

Michael N. Zundel, Esq.
James A Boevers, Esq.
PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City, Utah 8411

John L. Valentine, Esq.
Phillip E. Lowry, Esq.
HOWARD, LEWIS & PETERSEN
P.O. Box 1248
Provo, Utah 84603

Steven F. Allred, Esq.
584 State Street, #F
Orem, Utah 84058

DATED this ____ day of July, 2006.

_____
District Court Clerk

EXHIBIT C

Laws of the **State of Utah,** 1977, § 10-2-401

LAWS

of the

STATE OF UTAH, 1977

Passed at the

FORTY-SECOND REGULAR SESSION

of the Legislature

Convened at the Capitol in the City of Salt Lake

January 10, 1977

and Adjourned Sine Die on

March 10, 1977

Published by Authority

(2) Any census conducted, or population estimate of the Utah department of employment security conducted for the purpose of determining the population of any municipality shall be considered an official census and may be used for any purpose for which population is a factor.

10-2-303. Change of class not to affect property rights, contract rights or actions at law.

Whenever a municipality changes from one class to another class all property, property rights and rights of every kind which belonged to or where vested in the municipality at the time of the change shall belong to and be vested in it after the change; and no contract, claim or right of the municipality or demand or liability against it, shall be altered or affected in any way by the change; and the change shall not have any effect on or in any action at law, prosecution, business, work and proceedings shall continue and may be conducted and proceed as if no change in classification of the municipality had taken place; but when a different remedy is given by law and is applicable to any right which the municipality possessed at the time of the change in classification the remedy shall be cumulative to the remedy applicable before the change, and may be so used.

10-2-304. Ordinances to continue in force—No change in identity.

All ordinances, orders and resolutions in force in any municipality when it becomes another class of municipality insofar as the ordinances, orders and resolutions are not repugnant to law, shall continue in full force and effect until repealed or amended, and the change in the classification of the municipality shall have no effect. The change in classification of any municipality shall not in any way change the identity of the municipality.

10-2-305. Change of classes—Officers.

When by proclamation of the governor, any municipality shall become a municipality of another class, the officers then in office shall continue to be the officers of the municipality until their respective terms of office expire, and until their successors shall be duly elected and qualified.

10-2-306. Judicial notice taken of existence and class.

All courts in this state shall take judicial notice of the existence and classification of any municipality.

PART 4

EXTENSION OF CORPORATE LIMITS

10-2-401. Annexation of contiguous territory.

Whenever a majority of the owners of real property and the owners of at least one third in value of the real property, as shown by the last assessment roles, in territory lying contiguous to the corporate boundaries of any

municipality, shall desire to annex such territory to such municipality, they shall cause an accurate plat or map of such territory to be made under the supervision of the municipal engineer or a competent surveyor, and a copy of such plat or map, certified by the engineer or surveyor as the case may be, shall be filed in the office of the recorder of the municipality, together with a written petition signed by a majority of the real property owners and by the owners of not less than one third in value of the real property, as shown by the last assessment roles, of the territory described in the plat or map; and the governing body of the municipality, at a regular meeting shall vote on the question of such annexation. The members of the governing body may by resolution passed by a two-thirds vote, accept the petition for annexation, subject to the terms and conditions as they deem reasonable, and the territory shall then and there be annexed and within the boundaries of the municipality. If the territory is annexed, a copy of the duly certified plat or map shall at once be filed in the office of the county recorder, together with a certified copy of the resolution declaring the annexation. The articles of incorporation of the municipality shall be amended to show the new territory annexed to the municipality and copy of the articles of amendment shall be filed with the secretary of state and county clerk or clerks in the same manner as prescribed in 10-2-108. On filing the maps, plats and articles of amendment, the annexation shall be deemed complete and the territory annexed shall be deemed and held to be part of the annexing municipality, and the inhabitants thereof shall enjoy the privileges of the annexation and be subject to the ordinances, resolutions and regulations of the annexing municipality.

10-2-402. Limitations on annexation.

In no event shall the governing body of a municipality approve annexations which would result in unincorporated islands being left within the boundaries of the municipality, but existing islands or peninsulas within a municipality at the effective date of this act may be annexed in portions, leaving islands if a public hearing is held, and the governing body of such municipality passes a resolution to the effect that the creation or leaving of an island is in the interest of the municipality.

10-2-403. Annexation deemed conclusive.

Whenever the inhabitants of any territory annexed to any municipality pay property tax levied by the municipality for one or more years following the annexation and no inhabitants of the territory protests the annexation during the year following the annexation, the territory shall be conclusively presumed to be properly annexed to the annexing municipality.

PART 5

RESTRICTION OF MUNICIPAL LIMITS

10-2-501. Disconnection by petition to district court.

EXHIBIT D

Laws of the State of Utah, 1977, § 10-2-403

LAWS

of the

STATE OF UTAH, 1977

Passed at the

FORTY-SECOND REGULAR SESSION

of the Legislature

Convened at the Capitol in the City of Salt Lake

January 10, 1977

and Adjourned Sine Die on

March 10, 1977

Published by Authority

---

municipality, shall desire to annex such territory to such municipality, they shall cause an accurate plat or map of such territory to be made under the supervision of the municipal engineer or a competent surveyor, and a copy of such plat or map, certified by the engineer or surveyor as the case may be, shall be filed in the office of the recorder of the municipality, together with a written petition signed by a majority of the real property owners and by the owners of not less than one third in value of the real property, as shown by the last assessment roles, of the territory described in the plat or map; and the governing body of the municipality, at a regular meeting shall vote on the question of such annexation. The members of the governing body may by resolution passed by a two-thirds vote, accept the petition for annexation, subject to the terms and conditions as they deem reasonable, and the territory shall then and there be annexed and within the boundaries of the municipality. If the territory is annexed, a copy of the duly certified plat or map shall at once be filed in the office of the county recorder, together with a certified copy of the resolution declaring the annexation. The articles of incorporation of the municipality shall be amended to show the new territory annexed to the municipality and copy of the articles of amendment shall be filed with the secretary of state and county clerk or clerks in the same manner as prescribed in 10-2-108. On filing the maps, plats and articles of amendment, the annexation shall be deemed complete and the territory annexed shall be deemed and held to be part of the annexing municipality, and the inhabitants thereof shall enjoy the privileges of the annexation and be subject to the ordinances, resolutions and regulations of the annexing municipality.

10-2-402. Limitations on annexation.

In no event shall the governing body of a municipality approve annexations which would result in unincorporated islands being left within the boundaries of the municipality, but existing islands or peninsulas within a municipality at the effective date of this act may be annexed in portions, leaving islands if a public hearing is held, and the governing body of such municipality passes a resolution to the effect that the creation or leaving of an island is in the interest of the municipality.

10-2-403. Annexation deemed conclusive.

Whenever the inhabitants of any territory annexed to any municipality pay property tax levied by the municipality for one or more years following the annexation and no inhabitants of the territory protests the annexation during the year following the annexation, the territory shall be conclusively presumed to be properly annexed to the annexing municipality.

PART 5

RESTRICTION OF MUNICIPAL LIMITS

10-2-501. Disconnection by petition to district court.

EXHIBIT E

Utah Code Ann. § 10-2-422 (2006)

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(i) adopt a resolution indicating the intent of the municipal legislative body to adjust a common boundary;

(ii) hold a public hearing on the proposed adjustment no less than 60 days after the adoption of the resolution under Subsection (2)(a)(i); and

(iii) (A) publish notice at least once a week for three successive weeks in a newspaper of general circulation within the municipality; or

(B) if there is no newspaper of general circulation within the municipality, post at least one notice per 1,000 population in places within the municipality that are most likely to give notice to residents of the municipality.

(b) The notice required under Subsection (2)(a)(iii) hall:

(i) state that the municipal legislative body has adopted a resolution indicating the municipal legislative body's intent to adjust a boundary that the municipality has in common with another municipality;

(ii) describe the area proposed to be adjusted;

(iii) state the date, time, and place of the public hearing required under Subsection (2)(a)(ii);

(iv) state in conspicuous and plain terms that the municipal legislative body will adjust the boundaries unless, at or before the public hearing under Subsection (2)(a)(ii), written protests to the adjustment are filed by the owners of private real property that:

(A) is located within the area proposed for adjustment;

(B) covers at least 25% of the total private land area within the area proposed for adjustment; and

(C) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment; and

(v) state that the area that is the subject of the boundary adjustment will, because of the boundary adjustment, be automatically annexed to a local district providing fire protection, paramedic, and emergency services, as provided in Section 17B-2-515.5, if:

(A) the municipality to which the area is being added because of the boundary adjustment is entirely within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services; and

(II) in the creation of which an election was not required because of Subsection 17B-2-214(3)(c); and

(B) the municipality from which the area is being taken because of the boundary adjustment is not within the boundaries of the local district; and

(vi) state that the area proposed for annexation to the municipality will be automatically withdrawn from a local district providing fire protection, paramedic, and emergency services, as provided in Subsection 17B-2-601(2), if:

(A) the municipality to which the area is being added because of the boundary adjustment is not within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services; and

(II) in the creation of which an election was not required because of Subsection 17B-2-214(3)(c); and

(c) The first publication of the notice required under Subsection (2)(a)(iii)(A) shall be within 14 days of the municipal legislative body's adoption of a resolution under Subsection (2)(a)(i).

(3) Upon conclusion of the public hearing under Subsection (2)(a)(ii), the municipal legislative body may adopt an ordinance adjusting the common boundary unless, at or before the hearing under Subsection (2)(a)(ii), written protests to the adjustment have been filed with the city recorder or town clerk, as the case may be, by the owners of private real property that:

(a) is located within the area proposed for adjustment;

(b) covers at least 25% of the total private land area within the area proposed for adjustment; and

(c) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment.

(4) The municipal legislative body shall comply with the requirements of Section 10-2-425 as if the boundary change were an annexation.

(5) An ordinance adopted under Subsection (3) becomes effective when each municipality involved in the boundary adjustment has adopted an ordinance under Subsection (3) and as determined under Subsection 10-2-425(5) if the boundary change were an annexation. **2005**

10-2-420. Bonds not affected by boundary adjustments or annexations — Payment of property taxes.

(1) A boundary adjustment or annexation under this part may not jeopardize or endanger any general obligation or revenue bond.

(2) A bondholder may require the payment of property taxes from any area that:

(a) was included in the taxable value of the municipality or other governmental entity issuing the bond at the time the bond was issued; and

(b) is no longer within the boundaries of the municipality or other governmental entity issuing the bond due to the boundary adjustment or annexation. **1997**

10-2-421. Electric utility service in annexed area — Reimbursement for value of facilities.

(1) If the electric consumers of the area being annexed are receiving electric utility services from sources other than the annexing municipality, the municipality may not, without the consent of the electric utility, furnish its electric utility services to the electric consumers until the municipality has reimbursed the electric utility company that previously provided the services for the value of those facilities dedicated to provide service to the annexed area.

(2) If the annexing municipality and the electric utility cannot agree on the value, the state court having jurisdiction shall determine the fair market value of those facilities, and the municipality shall reimburse the fair market value, as determined by the court, to the electric utility company. **2001**

10-2-422. Conclusive presumption of annexation.

An area annexed to a municipality under this part shall be conclusively presumed to have been validly annexed if:

(1) the municipality has levied and the taxpayers within the area have paid property taxes for more than one year after annexation; and

(2) no resident of the area has contested the annexation in a court of proper jurisdiction during the year following annexation. **1997**

10-2-423, 10-2-424. Repealed. **1997**

EXHIBIT F
Vicinity Map No. 2567

MONSEN ENG. 100 2-77 MC3906

Map Filing # 1966